

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE: ZIMMER NEXGEN KNEE)
IMPLANT PRODUCTS LIABILITY) MDL NO. 2272
LITIGATION)
)
) Master Docket Case No. 1:11-cv-05468
)
This Document Relates to:) Honorable Rebecca Pallmeyer
)
Albert v. Zimmer, Inc., et al.,)
Case No. 1:12-cv-02360)

MOTION TO DISMISS AND TO STRIKE CLASS ACTION ALLEGATIONS

Defendants Zimmer, Inc., Zimmer Holdings, Inc., and Zimmer Surgical, Inc., f/k/a Zimmer Orthopaedic Surgical Products, Inc. (collectively, "Zimmer"), respectfully move this Court pursuant to Federal Rules of Civil Procedure 12(b)(6), 23(c)(1)(A), and 23(d)(1)(D), to dismiss the claims of the plaintiff, Loretta Albert ("Plaintiff"), in their entirety, and to strike Plaintiff's facially defective class action allegations, which provide no basis for class certification.

As discussed in Zimmer's concurrently filed Memorandum, Plaintiff's Complaint should be dismissed for failure to state a claim because it both fails to plead a cause of action that is cognizable under Louisiana law, and fails to plead sufficient facts to establish the required element of causation.

Moreover, to the extent Zimmer's Motion To Dismiss results in anything less than a dismissal of Plaintiff's Complaint *with prejudice*, the Court should concurrently consider and grant Zimmer's Motion To Strike Class Action Allegations because Plaintiff's class allegations are facially defective and definitively establish that a class action cannot be maintained.

For these reasons, set forth more fully in Zimmer's concurrently filed Memorandum, Zimmer respectfully requests that the Court dismiss Plaintiff's pleaded claims (Counts I – VI), and strike Plaintiff's class allegations from the Complaint.

Respectfully submitted,

FAEGRE BAKER DANIELS LLP

/s/ Andrea Roberts Pierson

Joseph H. Yeager, Jr. (Ind. State Bar #2083-49)
Andrea Roberts Pierson (Ind. State Bar #18435-49-A)
300 North Meridian Street, Suite 2700
Indianapolis, IN 46204
Telephone: (317) 237-0300
Fax: (317) 237-1000
Email: jay.yeager@faegrebd.com
apierson@faegrebd.com

J. Stephen Bennett (Ill. State Bar #6226615)
111 East Wayne Street, Suite 800
Fort Wayne, IN 46802-2600
Telephone: (260) 424-8000
Fax: (260) 460-1700
Email: stephen.bennett@faegrebd.com

*Attorneys for Zimmer, Inc., Zimmer Holdings, Inc.,
and Zimmer Surgical, Inc., f/k/a Zimmer Orthopaedic
Surgical Products, Inc.*

CERTIFICATE OF SERVICE

I certify that on September 14, 2012, a copy of the foregoing Motion To Dismiss And To Strike Class Action Allegations was filed electronically. Parties may access this filing through the Court's system.

/s/ Andrea Roberts Pierson _____